

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES,

vs.

KASHEEF MCCALLA,

Defendant.

Crim. No.: 11-452(FLW)

ORDER

THIS MATTER having been opened to the Court by pro se defendant Kasheef McCalla (“Defendant”), on an application for compassionate release under the First Step Act (“FSA”), 18 U.S.C. § 3582(c)(1)(A), in light of the current situation with the coronavirus pandemic; it appearing that Defendant is currently incarcerated at FCI Fort Dix; it appearing that Defendant, prior to filing the instant motion, submitted a Letter Request in his civil habeas matter, seeking early release based on the same reason as the current application, and the Court construed that request as one made under the FSA, *see McCalla v. United States*, Civ. Action No.: 13-6977(FLW)[Dkt #25]; it appearing that on April 13, 2020, the Court denied Defendant’s Letter Request for failure to exhaust pursuant to the FSA, explaining that the Court has no authority under the statute to waive exhaustion (the “April Order”); it appearing that Defendant, in his current motion, asks the Court to excuse exhaustion because of the spread of COVID-19 virus in his prison facility; however, for the same reasoning discussed in the Court’s April Order, Defendant’s application is denied for failure to exhaust consistent with Third Circuit’s recent precedent in *United States v. Raia*, No. 20-1033, 2020 U.S. App. LEXIS 10582, at *5 (3d Cir. Apr. 2, 2020), *see United States v. Epstein*, No. 14-cr-287, 2020 U.S. Dist. LEXIS 62833 (D.N.J. Apr. 9, 2020)

(Wolfson, J.) (explaining that “a defendant seeking a reduction in his term of imprisonment [under Section 3582(c)(1)(A)] bears the burden of establishing *both* that he has satisfied 1) the procedural prerequisites for judicial review, *and* 2) that compelling and extraordinary reasons exist to justify compassionate release.”) (emphasis added); accordingly,

IT IS on this 15th day of April, 2020,

ORDERED that Defendant’s motion for compassionate release under the First Step Act is **DENIED** without prejudice to the Defendant to renew his application, if the Bureau of Prisons does not respond to his administrative request for compassionate release within 30 days of submitting the request.

/s/ Freda L. Wolfson
Hon. Freda L. Wolfson
U.S. Chief District Judge